



U.S. DEPARTMENT OF AGRICULTURE

3410-02P

Agricultural Marketing Service

7 CFR Part 1260

[Doc. No. AMS-LS-11-0086]

Beef Promotion and Research; Amendment to the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would expand the contracting authority as established under the Beef Promotion and Research (Order). The Beef Research and Information Act (Act) requires that the Beef Promotion Operating Committee (BPOC) enter into contracts with established national non-profit industry-governed organizations including the Federation of State Beef Councils to implement programs of promotion, research, consumer information, and industry information. The Act does not define "national non-profit industry governed organization," however, the Order states that these organizations must be governed by a board of directors representing the cattle or beef industry on a national basis and that they were active and ongoing prior to enactment of the Act. This proposed rule would change the date requirement in the Order so that organizations otherwise qualified could be eligible

to contract with the BPOC for the implementation and conduct of Beef Checkoff programs if they have been active and ongoing for at least two years.

**DATES:** Written comments must be received by [Insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Comments must be posted online at [www.regulations.gov](http://www.regulations.gov) or sent to Craig Shackelford, Agricultural Marketing Specialist, Marketing Programs Division, Livestock and Seed Program, Agricultural Marketing Service, USDA, Room 2628-S, STOP 0251, 1400 Independence Avenue, SW, Washington, D.C. 20250-0251; or fax to (202) 720-1125. All comments should reference the docket number, the date, and the page number of this issue of the *Federal Register*. Comments will be available for public inspection at the aforementioned address, as well as on the Internet at <http://www.regulations.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Craig Shackelford, Agricultural Marketing Specialist, Marketing Programs Division, on 202/720-1115, fax 202/720-1125, or by e-mail at [craig.shackelford@ams.usda.gov](mailto:craig.shackelford@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

## **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

## **Regulatory Flexibility Act and Paperwork Reduction Act**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

In the February 2011 publication of "Farms, Land in Farms, and Livestock Operations," the U.S. Department of Agriculture's (USDA) National Agricultural Statistics Service (NASS) estimates that in 2010 the number of operations in the United States with

cattle totaled approximately 935,000. The majority of these operations that are subject to the Order may be classified as small entities.

The proposed rule imposes no new burden on the industry. It merely expands the contracting authority within the Order to permit a greater number of organizations to perform work on behalf of the BPOC. These organizations in general represent the operations that are subject to the Order.

### **Background and Proposed Action**

The Order is authorized by the Act of 1985 [7 U.S.C. 2901-2918]. The Act was passed as part of the 1985 Farm Bill [Pub. L.99-198]. The program became effective on July 18, 1986, when the Order was issued [51 FR 26132]. Assessments began on October 1, 1986.

Section 5(6) of the Act provides that the BPOC, to insure coordination and efficient use of funds, shall enter into contracts or agreements for implementing any activities which it has approved to be carried out, with established national nonprofit industry-governed organizations including the Federation of State Beef Councils. This language has the effect of requiring the BPOC to contract with organizations, which qualify as established national non-profit industry-governed organizations. The Act does not define "national non-profit industry governed organization."

Currently, section 1260.113 of the Order defines "established national non-profit industry-governed organizations" as organizations which: (a) are non-profit organizations pursuant to sections 501(c)(3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c)(3), (5), and (6)); (b) are governed by a board of directors representing the cattle or beef industry on a national basis; and (c) were active and ongoing before enactment of the Act. This proposed rule would amend section 1260.113 of the Order by replacing the existing language under paragraph (c), "were active and ongoing before the enactment of the Act" with "have been active and ongoing for at least two years."

The Act, enacted on December 23, 1985, directed the Secretary of Agriculture (Secretary) to accept proposals from any certified organization or interested person. The Department published an invitation to submit proposals in the *Federal Register* on February 14, 1986 [51 FR 5543]. USDA received an industry proposal that it published in a proposal rule on March 14, 1986 [51 FR 8980]. This proposed rule included a definition of "established national non-profit industry governed organizations" that read: "'Established National Non-profit Industry Governed Organizations' means any organization which: (a) are non-profit organizations pursuant to sections 501(c)(3), (5) or (6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), (5) and (6); (b) are governed by a board of directors representing

the cattle or beef industry on a national basis whose Board is composed of a majority of producers; and (c) was active and ongoing before enactment of the Act."

The final rule that issued the Order was published on July 18, 1986 [51 FR 26132]. The definition for "established national non-profit industry governed organizations" was modified by deletion of the requirement that the board of directors of such organizations be composed of a majority of producers. This modification was made based on comments to the proposed rule that said the previous definition was too restrictive.

At the time of the passage of the Act and the promulgation of the Order, a limited number of industry-governed organizations existed with the requisite knowledge, skills, and experience related to the marketing of beef and beef products. The proponents of the Beef Checkoff wished to utilize and coordinate with those organizations already conducting activities similar to those envisioned under the Act and to enhance coordination and the efficient use of funds among beef promotion entities, and to enhance accountability to producers.

This proposed rule would amend the definition of "Established National Non-profit Industry Governed Organizations" to permit the BPOC to contract with a growing number of organizations possessing the requisite experience, skills and information related to the marketing of beef and beef products

that exist today while still requiring a minimum level of organizational experience so as not to encourage the unnecessary proliferation of inexperienced organizations desiring to contract with the BPOC. USDA believes that a minimum level of experience within an organization is beneficial. To achieve both goals, this proposal would amend §1260.113 "Established national non-profit industry-governed organizations" by replacing the existing language under paragraph (c) to read "have been active or ongoing for at least two years."

In 2006, the National Cattlemen's Beef Association (NCBA) and the American Farm Bureau initiated the Industry-Wide Beef Checkoff Taskforce (Taskforce) to review, study, and recommend enhancements to the Beef Checkoff program for the purpose of strengthening the Beef Checkoff Program for the common good of the beef industry. The Taskforce included producer and industry representatives and representatives from national organizations, while USDA took on an advisory role during meetings. The Taskforce issued a report in September 2006, which included a recommendation to eliminate section 1260.113(c) in order to make the Beef Checkoff more inclusive. USDA believes that permitting a greater number of organizations to contract with the BPOC could bring new perspectives to the contracting process.

In February 2008 at the Cattle Industry Annual Convention, leaders of the Cattlemen's Beef Board (Board) asked AMS officials

if the Board could conduct a program review. The industry officials believed that it would be in the best interest of the Beef Checkoff Program to conduct a review of the operations to determine if there are any changes that need to or could be made in program operations, the Act, or Order that would facilitate a more effective Beef Checkoff Program. Included in the Board's subsequent January 2009 recommendations to AMS was a recommendation for a statutory amendment intended to result in an expansion of the contracting authority to organizations created after the 1986 enactment of the Act.

Finally, a meeting was held in Minneapolis, Minnesota on September 27, 2011 attended by many industry stakeholders and co-hosted by the U.S. Cattlemen's Association and the National Farmers Union as requested by the Secretary. The goal of the meeting was to bring more broad-based producer support to the Beef Checkoff program through a discussion of issues regarding Beef Checkoff administration and to provide the Secretary with recommendations that would enhance support for the Beef Checkoff. Many major Beef Checkoff industry stakeholders attended, including the American National Cattlegrowers, American Veal Association, Livestock Marketing Association, NCBA, National Livestock Producers Association, and Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of America (R-CALF).



Representatives from the AMS also attended the meeting, as did the Chief Executive Officer and Producer Chairman of the Board.

As a result of that meeting, the Secretary received a joint letter signed by most of the organizations in attendance. The letter requested that USDA amend Beef Checkoff regulations to expand the contracting authority as authorized under the Act and Order by permitting organizations that are active and ongoing for at least two years to contract with the BPOC.

### **Conclusion**

A greater number of beef industry organizations exist now than did at the time the Order was issued. The Beef Checkoff Program could benefit from the perspectives and skills of some of these organizations that are ineligible solely because they were formed after the enactment of the Act. For several years, the beef industry has been recommending expanding the eligibility of organizations to contract with the BPOC in order to enhance the Beef Checkoff Program. Amending the Order would allow the BPOC to contract with organizations possessing the requisite experience, skills and information related to the marketing of beef and beef products, as is intended under the Act.

A 60-day comment period is provided to allow interested persons to respond to this proposal. Sixty days is deemed appropriate to facilitate the orderly and thoughtful consideration of this proposal.

## **List of Subjects in 7 CFR part 1260**

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreement, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1260 be amended as follows:

### **PART 1260--BEEF PROMOTION AND RESEARCH**

1. The authority citation for 7 CFR part 1260 continues to read as follows:

**Authority:** 7 U.S.C. 2901-2911 and 7 U.S.C. 7401.

2. In § 1260.113, paragraph (c) is revised to read as follows:

**§ 1260.113 Established national non-profit industry-governed organizations.**

\* \* \* \* \*

(c) Have been active and ongoing for at least two years.

Dated: February 28, 2012

Robert C. Keeney  
Acting Administrator  
Agricultural Marketing Service

[FR Doc. 2012-5145 Filed 03/01/2012 at 8:45 am; Publication Date: 03/02/2012]